

AMENDED IN ASSEMBLY MAY 10, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2858

Introduced by Assembly Members Leno and Yee

February 24, 2006

An act to amend Section 1370 of the Penal Code *and to amend Section 5350 of the Welfare and Institutions Code*, relating to competency.

LEGISLATIVE COUNSEL'S DIGEST

AB 2858, as amended, Leno. Trials: mental competence: defendant.

Existing law requires a court to order a defendant who has been found incompetent to stand trial to be delivered to a state hospital or treatment facility or be placed in an outpatient treatment program to promote the restoration of competency. Existing law requires that if a defendant charged with a violent felony is placed in an outpatient program, the court must make certain findings.

This bill would, in addition, require a court that places a defendant charged with a violent felony in an outpatient program to give notice to the sheriff and the district attorney of the county in which the criminal charges are pending and defendant's counsel.

Existing law also requires that if the defendant has not regained competency after 3 years or the maximum term of imprisonment provided by law for the most serious charged offense, whichever is shorter, he or she will be returned to the committing court. If the committing court finds that the defendant is gravely disabled, existing law requires the court to initiate conservatorship proceedings and give notice of the proceedings to the community program director.

This bill would require, in addition, the court to give notice of the proceedings to the sheriff and the district attorney of the county in which the criminal charges are pending and defendant's counsel.

Existing law provides procedure for the appointment of a conservator for a person who is determined to be gravely disabled, as specified.

This bill would forbid a court from appointing a conservator if the appointment would not result in adequate protection of the public.

~~Existing law requires a that defendant be committed to a state hospital when he or she is found incompetent to stand trial. Existing law also requires that if the defendant has not regained competency after 3 years or the maximum term of imprisonment provided by law for the most serious charged offense, whichever is shorter, he or she will be returned to the committing court.~~

~~This bill would require the defendant to be returned to the committing court when there has been a reasonable amount of time to determine if the defendant will ever regain mental competence based on consideration of specified factors.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:

3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged shall proceed, and judgment may be pronounced.

6 (B) If the defendant is found mentally incompetent, the trial or
7 judgment shall be suspended until the person becomes mentally
8 competent.

9 (i) In the meantime, the court shall order that the mentally
10 incompetent defendant be delivered by the sheriff to a state
11 hospital for the care and treatment of the mentally disordered, or
12 to any other available public or private treatment facility
13 approved by the community program director that will promote
14 the defendant's speedy restoration to mental competence, or
15 placed on outpatient status as specified in Section 1600.

16 (ii) However, if the action against the defendant who has been
17 found mentally incompetent is on a complaint charging a felony

1 offense specified in Section 290, the prosecutor shall determine
2 whether the defendant previously has been found mentally
3 incompetent to stand trial pursuant to this chapter on a charge of
4 a Section 290 offense, or whether the defendant is currently the
5 subject of a pending Section 1368 proceeding arising out of a
6 charge of a Section 290 offense. If either determination is made,
7 the prosecutor shall so notify the court and defendant in writing.
8 After this notification, and opportunity for hearing, the court
9 shall order that the defendant be delivered by the sheriff to a state
10 hospital or other secure treatment facility for the care and
11 treatment of the mentally disordered unless the court makes
12 specific findings on the record that an alternative placement
13 would provide more appropriate treatment for the defendant and
14 would not pose a danger to the health and safety of others.

15 (iii) If the action against the defendant who has been found
16 mentally incompetent is on a complaint charging a felony offense
17 specified in Section 290 and the defendant has been denied bail
18 pursuant to subdivision (b) of Section 12 of Article I of the
19 California Constitution because the court has found, based upon
20 clear and convincing evidence, a substantial likelihood that the
21 person's release would result in great bodily harm to others, the
22 court shall order that the defendant be delivered by the sheriff to
23 a state hospital for the care and treatment of the mentally
24 disordered unless the court makes specific findings on the record
25 that an alternative placement would provide more appropriate
26 treatment for the defendant and would not pose a danger to the
27 health and safety of others.

28 (iv) The clerk of the court shall notify the Department of
29 Justice in writing of any finding of mental incompetence with
30 respect to a defendant who is subject to clause (ii) or (iii) for
31 inclusion in his or her state summary criminal history
32 information.

33 (C) Upon the filing of a certificate of restoration to
34 competence, the court shall order that the defendant be returned
35 to court in accordance with Section 1372. The court shall
36 transmit a copy of its order to the community program director or
37 a designee.

38 (D) A defendant charged with a violent felony may not be
39 delivered to a state hospital or treatment facility pursuant to this
40 subdivision unless the state hospital or treatment facility has a

1 secured perimeter or a locked and controlled treatment facility,
2 and the judge determines that the public safety will be protected.

3 (E) For purposes of this paragraph, “violent felony” means an
4 offense specified in subdivision (c) of Section 667.5.

5 (F) A defendant charged with a violent felony may be placed
6 on outpatient status, as specified in Section 1600, only if the
7 court finds that the placement will not pose a danger to the health
8 or safety of others. *If the court places a defendant charged with a*
9 *violent felony on outpatient status, as specified in Section 1600,*
10 *the court must serve copies of the placement order on defense*
11 *counsel, the sheriff in the county where the defendant will be*
12 *placed and the district attorney for the county in which the*
13 *violent felony charges are pending against the defendant.*

14 (2) Prior to making the order directing that the defendant be
15 confined in a state hospital or other treatment facility or placed
16 on outpatient status, the court shall proceed as follows:

17 (A) The court shall order the community program director or a
18 designee to evaluate the defendant and to submit to the court
19 within 15 judicial days of the order a written recommendation as
20 to whether the defendant should be required to undergo
21 outpatient treatment, or committed to a state hospital or to any
22 other treatment facility. No person shall be admitted to a state
23 hospital or other treatment facility or placed on outpatient status
24 under this section without having been evaluated by the
25 community program director or a designee.

26 (B) The court shall hear and determine whether the defendant,
27 with advice of his or her counsel, consents to the administration
28 of antipsychotic medication, and shall proceed as follows:

29 (i) If the defendant, with advice of his or her counsel,
30 consents, the court order of commitment shall include
31 confirmation that antipsychotic medication may be given to the
32 defendant as prescribed by a treating psychiatrist pursuant to the
33 defendant’s consent. The commitment order shall also indicate
34 that, if the defendant withdraws consent for antipsychotic
35 medication, after the treating psychiatrist complies with the
36 provisions of subparagraph (C), the defendant shall be returned
37 to court for a hearing in accordance with this subdivision
38 regarding whether antipsychotic medication shall be
39 administered involuntarily.

1 (ii) If the defendant does not consent to the administration of
2 medication, the court shall hear and determine whether any of the
3 following is true:

4 (I) The defendant lacks capacity to make decisions regarding
5 antipsychotic medication, the defendant's mental disorder
6 requires medical treatment with antipsychotic medication, and, if
7 the defendant's mental disorder is not treated with antipsychotic
8 medication, it is probable that serious harm to the physical or
9 mental health of the patient will result. Probability of serious
10 harm to the physical or mental health of the defendant requires
11 evidence that the defendant is presently suffering adverse effects
12 to his or her physical or mental health, or the defendant has
13 previously suffered these effects as a result of a mental disorder
14 and his or her condition is substantially deteriorating. The fact
15 that a defendant has a diagnosis of a mental disorder does not
16 alone establish probability of serious harm to the physical or
17 mental health of the defendant.

18 (II) The defendant is a danger to others, in that the defendant
19 has inflicted, attempted to inflict, or made a serious threat of
20 inflicting substantial physical harm on another while in custody,
21 or the defendant had inflicted, attempted to inflict, or made a
22 serious threat of inflicting substantial physical harm on another
23 that resulted in his or her being taken into custody, and the
24 defendant presents, as a result of mental disorder or mental
25 defect, a demonstrated danger of inflicting substantial physical
26 harm on others. Demonstrated danger may be based on an
27 assessment of the defendant's present mental condition,
28 including a consideration of past behavior of the defendant
29 within six years prior to the time the defendant last attempted to
30 inflict, inflicted, or threatened to inflict substantial physical harm
31 on another, and other relevant evidence.

32 (III) The people have charged the defendant with a serious
33 crime against the person or property; involuntary administration
34 of antipsychotic medication is substantially likely to render the
35 defendant competent to stand trial; the medication is unlikely to
36 have side effects that interfere with the defendant's ability to
37 understand the nature of the criminal proceedings or to assist
38 counsel in the conduct of a defense in a reasonable manner; less
39 intrusive treatments are unlikely to have substantially the same

1 results; and antipsychotic medication is in the patient's best
2 medical interest in light of his or her medical condition.

3 (iii) If the court finds any of the conditions described in clause
4 (ii) to be true, the court shall issue an order authorizing the
5 treatment facility to involuntarily administer antipsychotic
6 medication to the defendant when and as prescribed by the
7 defendant's treating psychiatrist. The court shall not order
8 involuntary administration of psychotropic medication under
9 subclause (III) of clause (ii) unless the court has first found that
10 the defendant does not meet the criteria for involuntary
11 administration of psychotropic medication under subclause (I) of
12 clause (ii) and does not meet the criteria under subclause (II) of
13 clause (ii).

14 (iv) In all cases, the treating hospital, facility or program may
15 administer medically appropriate antipsychotic medication
16 prescribed by a psychiatrist in an emergency as described in
17 subdivision (m) of Section 5008 of the Welfare and Institutions
18 Code.

19 (v) Any report made pursuant to paragraph (1) of subdivision
20 (b) shall include a description of any antipsychotic medication
21 administered to the defendant and its effects and side effects,
22 including effects on the defendant's appearance or behavior that
23 would affect the defendant's ability to understand the nature of
24 the criminal proceedings or to assist counsel in the conduct of a
25 defense in a reasonable manner. During the time the defendant is
26 confined in a state hospital or other treatment facility or placed
27 on outpatient status, either the defendant or the people may
28 request that the court review any order made pursuant to this
29 subdivision. The defendant, to the same extent enjoyed by other
30 patients in the state hospital or other treatment facility, shall have
31 the right to contact the Patients' Rights Advocate regarding his or
32 her rights under this section.

33 (C) If the defendant consented to antipsychotic medication as
34 described in clause (i) of subparagraph (B), but subsequently
35 withdraws his or her consent, or, if involuntary antipsychotic
36 medication was not ordered pursuant to clause (ii) of
37 subparagraph (B), and the treating psychiatrist determines that
38 antipsychotic medication has become medically necessary and
39 appropriate, the treating psychiatrist shall make efforts to obtain
40 informed consent from the defendant for antipsychotic

1 medication. If informed consent is not obtained from the
2 defendant, and the treating psychiatrist is of the opinion that the
3 defendant lacks capacity to make decisions regarding
4 antipsychotic medication as specified in subclause (I) of clause
5 (ii) of subparagraph (B), or that the defendant is a danger to
6 others as specified in subclause (II) of clause (ii) of subparagraph
7 (B), the committing court shall be notified of this, including an
8 assessment of the current mental status of the defendant and the
9 opinion of the treating psychiatrist that involuntary antipsychotic
10 medication has become medically necessary and appropriate. The
11 court shall provide notice to the prosecuting attorney and to the
12 attorney representing the defendant and shall set a hearing to
13 determine whether involuntary antipsychotic medication should
14 be ordered in the manner described in subparagraph (B).

15 (3) When the court orders that the defendant be confined in a
16 state hospital or other public or private treatment facility, the
17 court shall provide copies of the following documents which
18 shall be taken with the defendant to the state hospital or other
19 treatment facility where the defendant is to be confined:

20 (A) The commitment order, including a specification of the
21 charges.

22 (B) A computation or statement setting forth the maximum
23 term of commitment in accordance with subdivision (c).

24 (C) A computation or statement setting forth the amount of
25 credit for time served, if any, to be deducted from the maximum
26 term of commitment.

27 (D) State summary criminal history information.

28 (E) Any arrest reports prepared by the police department or
29 other law enforcement agency.

30 (F) Any court-ordered psychiatric examination or evaluation
31 reports.

32 (G) The community program director's placement
33 recommendation report.

34 (H) Records of any finding of mental incompetence pursuant
35 to this chapter arising out of a complaint charging a felony
36 offense specified in Section 290 or any pending Section 1368
37 proceeding arising out of a charge of a Section 290 offense.

38 (4) When the defendant is committed to a treatment facility
39 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
40 court makes the findings specified in clause (ii) or (iii) of

1 subparagraph (B) of paragraph (1) to assign the defendant to a
2 treatment facility other than a state hospital or other secure
3 treatment facility, the court shall order that notice be given to the
4 appropriate law enforcement agency or agencies having local
5 jurisdiction at the site of the placement facility of any finding of
6 mental incompetence pursuant to this chapter arising out of a
7 charge of a Section 290 offense.

8 (5) When directing that the defendant be confined in a state
9 hospital pursuant to this subdivision, the court shall select the
10 hospital in accordance with the policies established by the State
11 Department of Mental Health.

12 (6) (A) If the defendant is committed or transferred to a state
13 hospital pursuant to this section, the court may, upon receiving
14 the written recommendation of the medical director of the state
15 hospital and the community program director that the defendant
16 be transferred to a public or private treatment facility approved
17 by the community program director, order the defendant
18 transferred to that facility. If the defendant is committed or
19 transferred to a public or private treatment facility approved by
20 the community program director, the court may, upon receiving
21 the written recommendation of the community program director,
22 transfer the defendant to a state hospital or to another public or
23 private treatment facility approved by the community program
24 director. In the event of dismissal of the criminal charges before
25 the defendant recovers competence, the person shall be subject to
26 the applicable provisions of the Lanterman-Petris-Short Act (Part
27 1 (commencing with Section 5000) of Division 5 of the Welfare
28 and Institutions Code). Where either the defendant or the
29 prosecutor chooses to contest either kind of order of transfer, a
30 petition may be filed in the court for a hearing, which shall be
31 held if the court determines that sufficient grounds exist. At the
32 hearing, the prosecuting attorney or the defendant may present
33 evidence bearing on the order of transfer. The court shall use the
34 same standards as are used in conducting probation revocation
35 hearings pursuant to Section 1203.2.

36 Prior to making an order for transfer under this section, the
37 court shall notify the defendant, the attorney of record for the
38 defendant, the prosecuting attorney, and the community program
39 director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in

1 the foreseeable future, the committing court shall order the
2 defendant to be returned to the court for proceedings pursuant to
3 paragraph (2) of subdivision (c). The court shall transmit a copy
4 of its order to the community program director or a designee.

5 (2) Any defendant who has been committed or has been on
6 outpatient status for 18 months and is still hospitalized or on
7 outpatient status shall be returned to the committing court where
8 a hearing shall be held pursuant to the procedures set forth in
9 Section 1369. The court shall transmit a copy of its order to the
10 community program director or a designee.

11 (3) If it is determined by the court that no treatment for the
12 defendant's mental impairment is being conducted, the defendant
13 shall be returned to the committing court. The court shall
14 transmit a copy of its order to the community program director or
15 a designee.

16 (4) At each review by the court specified in this subdivision,
17 the court shall determine if the security level of housing and
18 treatment is appropriate and may make an order in accordance
19 with its determination.

20 (c) (1) At the end of three years from the date of commitment
21 or a period of commitment equal to the maximum term of
22 imprisonment provided by law for the most serious offense
23 charged in the information, indictment, or misdemeanor
24 complaint, whichever is shorter, a defendant who has not
25 recovered mental competence shall be returned to the committing
26 court. The court shall notify the community program director or
27 a designee of the return and of any resulting court orders.

28 (2) Whenever any defendant is returned to the court pursuant
29 to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this
30 subdivision and it appears to the court that the defendant is
31 gravely disabled, as defined in subparagraph (B) of paragraph (1)
32 of subdivision (h) of Section 5008 of the Welfare and Institutions
33 Code, the court shall order the conservatorship investigator of the
34 county of commitment of the defendant to initiate
35 conservatorship proceedings for the defendant pursuant to
36 Chapter 3 (commencing with Section 5350) of Part 1 of Division
37 5 of the Welfare and Institutions Code. Any hearings required in
38 the conservatorship proceedings shall be held in the superior
39 court in the county that ordered the commitment. The court shall
40 transmit a copy of the order directing initiation of

1 conservatorship proceedings to the community program director
2 ~~or a designee and shall notify the community program director or~~
3 ~~a designee of the outcome of the proceedings or a designee, the~~
4 *sheriff and the district attorney of the county in which criminal*
5 *charges are pending, and the defendant's counsel of record. The*
6 *court shall notify the community program director or a designee,*
7 *the sheriff and district attorney of the county in which criminal*
8 *charges are pending, and the defendant's counsel of record of*
9 *the outcome of the conservatorship proceedings.*

10 (3) *If a change in placement is proposed for a defendant who*
11 *is committed pursuant to subparagraph (B) of paragraph (1) of*
12 *subdivision (h) of Section 5008 of the Welfare and Institutions*
13 *Code, the court shall provide notice and an opportunity to be*
14 *heard with respect to the proposed placement of the defendant to*
15 *the sheriff and the district attorney of the county in which*
16 *criminal charges are pending.*

17 ~~(3)~~

18 (4) Where the defendant is confined in a treatment facility, a
19 copy of any report to the committing court regarding the
20 defendant's progress toward recovery of mental competence shall
21 be provided by the committing court to the prosecutor and to the
22 defense counsel.

23 (d) The criminal action remains subject to dismissal pursuant
24 to Section 1385. If the criminal action is dismissed, the court
25 shall transmit a copy of the order of dismissal to the community
26 program director or a designee.

27 (e) If the criminal charge against the defendant is dismissed,
28 the defendant shall be released from any commitment ordered
29 under this section, but without prejudice to the initiation of any
30 proceedings that may be appropriate under the
31 Lanterman-Petris-Short Act, Part 1 (commencing with Section
32 5000) of Division 5 of the Welfare and Institutions Code.

33 (f) As used in this chapter, "community program director"
34 means the person, agency, or entity designated by the State
35 Department of Mental Health pursuant to Section 1605 of this
36 code and Section 4360 of the Welfare and Institutions Code.

37 (g) For the purpose of this section, "secure treatment facility"
38 shall not include, except for state mental hospitals, state
39 developmental centers, and correctional treatment facilities, any
40 facility licensed pursuant to Chapter 2 (commencing with Section

1 1250) of, Chapter 3 (commencing with Section 1500) of, or
2 Chapter 3.2 (commencing with Section 1569) of, Division 2 of
3 the Health and Safety Code, or any community board and care
4 facility.

5 *SEC. 2. Section 5350 of the Welfare and Institutions Code is*
6 *amended to read:*

7 5350. A conservator of the person, of the estate, or of the
8 person and the estate may be appointed for any person who is
9 gravely disabled as a result of mental disorder or impairment by
10 chronic alcoholism.

11 The procedure for establishing, administering, and terminating
12 a conservatorship under this chapter shall be the same as that
13 provided in Division 4 (commencing with Section 1400) of the
14 Probate Code, except as follows:

15 (a) A conservator may be appointed for a gravely disabled
16 minor.

17 (b) (1) Appointment of a conservator under this part,
18 including the appointment of a conservator for a person who is
19 gravely disabled, as defined in subparagraph (A) of paragraph (1)
20 of subdivision (h) of Section 5008, shall be subject to the list of
21 priorities in Section 1812 of the Probate Code unless the officer
22 providing conservatorship investigation recommends otherwise
23 to the superior court.

24 (2) In appointing a conservator, as defined in subparagraph (B)
25 of paragraph (1) of subdivision (h) of Section 5008, the court
26 shall consider the purposes of protection of the public and the
27 treatment of the conservatee. *Notwithstanding any other*
28 *provision of this section, the court shall not appoint the proposed*
29 *conservator if the court determines that appointment of the*
30 *proposed conservator will not result in adequate protection of*
31 *the public.*

32 (c) No conservatorship of the estate pursuant to this chapter
33 shall be established if a conservatorship or guardianship of the
34 estate exists under the Probate Code. When a gravely disabled
35 person already has a guardian or conservator of the person
36 appointed under the Probate Code, the proceedings under this
37 chapter shall not terminate the prior proceedings but shall be
38 concurrent with and superior thereto. The superior court may
39 appoint the existing guardian or conservator of the person or
40 another person as conservator of the person under this chapter.

1 (d) The person for whom conservatorship is sought shall have
2 the right to demand a court or jury trial on the issue whether he
3 or she is gravely disabled. Demand for court or jury trial shall be
4 made within five days following the hearing on the
5 conservatorship petition. If the proposed conservatee demands a
6 court or jury trial before the date of the hearing as provided for in
7 Section 5365, the demand shall constitute a waiver of the
8 hearing.

9 Court or jury trial shall commence within 10 days of the date
10 of the demand, except that the court shall continue the trial date
11 for a period not to exceed 15 days upon the request of counsel for
12 the proposed conservatee.

13 This right shall also apply in subsequent proceedings to
14 reestablish conservatorship.

15 (e) (1) Notwithstanding subparagraph (A) of paragraph (1) of
16 subdivision (h) of Section 5008, a person is not “gravely
17 disabled” if that person can survive safely without involuntary
18 detention with the help of responsible family, friends, or others
19 who are both willing and able to help provide for the person’s
20 basic personal needs for food, clothing, or shelter.

21 (2) However, unless they specifically indicate in writing their
22 willingness and ability to help, family, friends, or others shall not
23 be considered willing or able to provide this help.

24 (3) The purpose of this subdivision is to avoid the necessity
25 for, and the harmful effects of, requiring family, friends, and
26 others to publicly state, and requiring the court to publicly find,
27 that no one is willing or able to assist the mentally disordered
28 person in providing for the person’s basic needs for food,
29 clothing, or shelter.

30 (4) This subdivision does not apply to a person who is gravely
31 disabled, as defined in subparagraph (B) of paragraph (1) of
32 subdivision (h) of Section 5008.

33 (f) Conservatorship investigation shall be conducted pursuant
34 to this part and shall not be subject to Section 1826 or Chapter 2
35 (commencing with Section 1850) of Part 3 of Division 4 of the
36 Probate Code.

37 (g) Notice of proceedings under this chapter shall be given to
38 a guardian or conservator of the person or estate of the proposed
39 conservatee appointed under the Probate Code.

40 (h) As otherwise provided in this chapter.

1
2
3
4
5

**All matter omitted in this version of the bill
appears in the bill as introduced in
Assembly, 02/24/06.**

O